

**REMARKS**

In the Final Office Action, the Examiner rejected claims 1, 3-21, 23 and 24. Claims 1, 3-21, 23 and 24 remain pending in the present application and are believed to be in condition for allowance. In view of the following remarks, the Applicants respectfully request reconsideration and allowance of all pending claims.

**Claim Rejections under 35 U.S.C. § 103**

In the Final Office Action, the Examiner rejected claims 1, 3, 7, 9, 12, 14-15, 17-18, 21 and 23 under 35 U.S.C. § 103(a) as unpatentable over Emery (U.S. Patent No. 6,610,001, hereinafter, "Emery"). Applicants respectfully traverse this rejection.

***Emery fails to disclose a non-ultrasonic sensor for sensing engagement or proximity.***

Emery does not teach or suggest a "a physical sensor adapted to sense engagement with a subject to be scanned by the ultrasonic transducer, wherein the physical sensor is independent from the ultrasonic transducer", or "physically sensing engagement of an ultrasound module with a subject using a non-ultrasonic sensor," or "non-ultrasonic sensing element configured to detect physical proximity of the hand holdable ultrasound probe relative to the subject," or "a physical sensor to non-ultrasonically detect proximity of a subject relative to the ultrasound unit," or "means for sensing non-ultrasonic signals to detect proximity of an ultrasound module relative to a subject to be scanned by ultrasonic transducers of the ultrasound module," as recited in independent claims 1, 9, 15, 18 and 23, respectively. In sharp contrast, Emery discloses analysis of only the ultrasonic transducer signals, rather than a non-ultrasonic signal. See Emery, column 4, lines 44-67; column 5, lines 1-40. Nowhere does Emery teach or suggest using a non-ultrasonic sensor for detecting engagement.

Emery discloses electro-optical, electromechanical or physical switches in the probe holder on the system to notify the system of parameters during use. However, Emery does not disclose the use of the above sensors to detect engagement or proximity

with the tissue. Instead, these transducers are used to detect other parameters such as motion, amount of light reflected by the tissue, etc. which can also be used to control voltage levels in the probe. *See* Emery, column 5, lines 59-67; column 6, lines 1-13. Thus, the use of these sensors in Emery cannot be compared with the use of the physical sensors disclosed in claims 1, 9, 15, 18 and 23. Again, the foregoing claims recite engagement or proximity, not merely motion or other parameters after the probe is already in use.

Since Emery fails to disclose a non-ultrasonic sensor for detecting engagement or proximity, the reference cannot support a *prima facie* case of anticipation of claims 1, 9, 15, 18, and 23. Moreover, the Examiner has acknowledged that Emery “does not explicitly state that these independent physical sensors detect ‘engagement with the subject’ as called for in the claim to the degree of inherency necessary for anticipation.” Office Action, p. 3. In formulating the rejection under Section 103(a), the Examiner stated that:

[I]t would have been inherently obvious to use at least the tissue reflectivity sensor to sense active engagement with the subject. In effect this is tantamount to the distance (proximity) sensor which applicants list in specification para [0015] as a category of physical sensor.

Office Action, page 3.

This unsupported conclusion is no substitute for the requisite teaching or suggestion in the prior art to modify the device disclosed in Emery. Such a teaching or suggestion is necessary to support a *prima facie* case of obviousness under Section 103. *See In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Accordingly, Applicants respectfully submit that independent claims 1, 9, 15, 18 and 23 and the claims depending therefrom are allowable and respectfully request the Examiner to withdraw the rejections.

In the Office Action, the Examiner also rejected claims 4 and 19 under 35 U.S.C. § 103(a) as unpatentable over Emery and further in view of Chiang et al. (U.S. Patent No.

5,957,846, hereinafter, "Chiang"). The Examiner also rejected claims 5-6, 20, 24 under 35 U.S.C. § 103(a) as unpatentable over Emery and further in view of Akisada et al. (U.S. Patent No. 6,183,426, hereinafter, "Akisada"). The Examiner also rejected claims 8, 10-11, 13 and 16 under 35 U.S.C. § 103(a) as unpatentable over Emery and further in view of Whitney et al. (U.S. Patent No. 5,396,891, hereinafter, "Whitney").

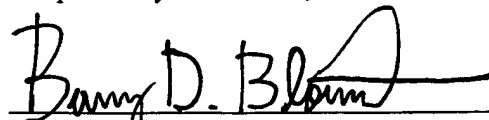
The dependent claims referred to in the preceeding paragraph depend directly or indirectly from independent claims 1, 9, 15 and 18. The cited references, taken alone or in hypothetical combination, are not believed to teach or suggest each and every element of independent claims 1, 9, 15 and 18. Consequently, claims 4, 5-6, 8, 10, 11, 13, 16, 19, 20 and 24 are believed to be patentable both by virtue of their dependency from allowable base claims, as well as for the subject matter they separately recite. Reconsideration and allowance of dependent claim 4, 5-6, 8, 10, 11, 13, 16, 19, 20 and 24 on this basis are requested.

### **Conclusion**

The Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

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Respectfully submitted,



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